

INDEFINITE DELIVERY/INDEFINITE QUANTITY CONTRACT  
DE-AM36-9XXXXXXXXX

**Includes 11/04 modified sections/changes  
05/26/05**

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## **PART I – THE SCHEDULE**

### **SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS**

#### **B.1 ITEMS BEING ACQUIRED/TOTAL PRICE**

The Contractor shall furnish all personnel, facilities, equipment, material, supplies, and services (except as may be expressly set forth in this contract as furnished by the Government) and otherwise do all things necessary for, or incident to, performance of the following items of work:

Item 1 - Provide Energy Savings Performance Contracting (ESPC) conservation services for federal Government facilities located in the Department of Energy (DOE) *[insert region]* Region of the United States, consisting of the states of *[insert by region]*.

The services shall be provided in accordance with not only the Statement of Work provided in Section C, Description/Specifications/Work Statement, of this contract, but also in accordance with all provisions in other sections of this contract, as well as all of its Attachments, and as revised by agency delivery order requests for proposal (DO RFPs). (See Section H.19 for more specific information.) Definitions of terms applicable to this contract are provided at Attachment 1 to the contract, for assistance in its performance.

(NOTE: There are no Reporting Requirements included in this contract for delivery orders issued against this Indefinite Delivery/Indefinite Quantity (IDIQ) contract award. The ordering agency for a specific delivery order project will include the actual reporting requirements in each specific delivery order issued against this contract. Attachment 2 to this contract provides a Sample Reporting Requirements Checklist for Delivery Orders.)

THE TOTAL MAXIMUM CONTRACT VALUE, defined as the sum of contractor payment streams associated with all delivery orders against all six IDIQ contracts awarded for this DOE Region, shall not exceed \$750,000,000.00.

THE MINIMUM GUARANTEE ORDER(S) VALUE for this specific IDIQ contract award is \$150,000.00.

#### **B.2 REQUIRED SERVICES**

The Government requires ESPC conservation services for federal Government facilities located as described in Section B.1, Item 1 above, and seeks to obtain these services using this indefinite delivery indefinite quantity energy savings performance contract (IDIQ ESPC).

The contractor shall provide, at no capital cost to the Government, all labor, material, and equipment necessary to reduce energy and water consumption and provide energy cost savings and related operation and maintenance cost savings at specific sites covered by delivery orders issued against this IDIQ contract. Contracted delivery order services may also include operations and maintenance services during a specific delivery order term as required in Section C or elsewhere of this contract, the specific delivery order, and/or as proposed by the contractor and accepted by the Government in a delivery order award.

**B.3 FAR 52.216-22 (MODIFIED) INDEFINITE QUANTITY (OCT 1995)**

This is an indefinite quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

- (1) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum". The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."
- (2) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- (3) Any order issued during the effective period of this contract and not completed within that period shall be completed by the contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period.

**B.4 FAR 52.216-18 (MODIFIED) ORDERING (OCT 1995)**

Delivery Orders under this Contract may be issued beginning on November 1, 2004. The Ordering period terminates on September 30, 2006. ESPC reauthorization authority, as provided in the Public Law 108-375 Section 1090, dated October 28, 2004, unless extended by Congress.

**B.5 FAR 52.216-19 (MODIFIED) ORDER LIMITATIONS (OCT 1995)**

- (1) The Government estimates it will procure, and thereby establishes as a maximum order amount for the total of ALL six contracts awarded in the DOE *[INSERT]* region identified, a not-to-exceed \$750,000,000 of ESPC services during the terms of the contracts awarded (see Section B.1). Also, the Government guarantees that a minimum of \$150,000 of ESPC services shall be awarded to the contractor during that same 25-year term. (See the limitation on ordering at Section B.4(b).). Therefore, the Government is not obligated to purchase from the contractor services that exceed a total value of \$150,000. (This value of services may be represented by anything from a single delivery order for one project, to a number of delivery orders for various projects.) The Contractor is likewise never obligated to provide offers for specific proposed delivery order projects, accept orders, or furnish services against this contract.
- (2) Notwithstanding paragraph (a) of this section, the Contractor shall honor any order received, including orders exceeding the maximum order limitation identified in paragraph (a), unless that order (or orders) is returned to the Agency Contracting Officer within thirty (30) days after issuance, with written notice stating the Contractor's intent not to provide the services called for, and the reasons therefor. Upon receiving this notice, the Government may acquire the supplies or services from another of the multiple-awardee Contractors for this DOE region.

## **B.6 NEGOTIATED CONTRACT B SCHEDULES**

The contract includes these negotiated schedules, the information in which shall be binding on the Contractor throughout the period of performance (overall term) of the contract. These schedules apply to all delivery orders issued against the contract. Following are the titles of each of these contract B schedules. They are made a part of this contract, in Part III, Section J, Attachment 3.

### **SCHEDULE B-1 IDIQ Contract Maximum Markups**

This Schedule provides the negotiated maximum markup percentages applicable to the both the direct costs of ECMs by technology category identified in Section C.2 and included in the Schedule DO-2 for a project proposal, and to the performance period expenses identified on the Schedule DO-3 for the proposal. These markups shall include all proposed indirect cost elements and profit. The indirect elements of expense in the markups include such things as overhead, general and administrative expense, general program marketing and management, etc. Any project expenses that are not directly the result of the development and implementation of an individual project are included in the markups, and they shall not include any direct expenses. The Contractor shall identify the elements of indirect expense included in the proposed markup for a specific delivery order project.

### **SCHEDULE B-2 IDIQ Contract Maximum Added Premiums**

This Schedule provides the negotiated maximum added premiums, as the number of basis points (basis point = 1/100 percentage points), that may be applied to the accepted applicable financial index used for a specific delivery order project to finance the project's investment amount. (The negotiated added premium plus the accepted applicable financial index equals the project's interest rate.) Per the schedule, the maximum added premiums are based on both the project term and total investment amount of the project. The Contractor shall provide evidence to the Agency Contracting Officer of the reasonableness of the added premium proposed for a specific delivery order project within the maximums allowed.

## **SECTION C — DESCRIPTION/SPECIFICATIONS/WORK STATEMENT**

### **C.1 GENERAL REQUIREMENTS/PROJECT SCOPE**

This Contract is to acquire under an energy savings performance, indefinite delivery/indefinite quantity (IDIQ) contract energy conservation services for the DOE region identified in **Section B.1**, to reduce energy, water consumption and associated utility costs, and energy-related operations and maintenance costs as specified in each Delivery Order issued against this contract. The Contractor shall be responsible for providing all labor, material, and capital to install energy and water conservation projects and provide operations and maintenance as specified in each Delivery Order. The cost of an Energy Conservation Measure (ECM) project must be covered by the reduced energy and related operation and maintenance cost savings incurred at the Federally-owned facility. The energy cost savings must be verified annually.

The scope of the Contract includes all Federally-owned facilities located in the region defined in **Section B.1**. The Contract may be used by authorized Federal agencies to acquire Energy Conservation Measures in accordance with the ordering procedures found at **Sections H.20 through H.26** of this Contract.

### **C.2 ENERGY CONSERVATION MEASURES (ECMs)**



**C.2.1 Types of Energy Conservation Measures (See Attachment 3 – Table B-1 for markup information)**

This Contract and its Delivery Orders require the Contractor to possess the capability to implement ECMs that include one or more of the following energy efficiency or renewable energy technology categories:

1. Boiler Plant Improvements, such as, but not limited to
  - boiler control improvements
  - upgrade of natural-gas-fired boilers with new controls
2. Chiller Plant Improvements, such as, but not limited to
  - chiller retrofits or replacements
3. Building Automation Systems / Energy Management Control Systems (EMCS), such as, but not limited to
  - HVAC upgrade from pneumatics to Direct Digital Control
  - Upgrade or replacement of existing EMCS systems
4. Heating, Ventilating, and Air Conditioning (HVAC, not including boilers, chillers, and BAS/EMCS) such as, but not limited to
  - packaged air conditioning unit replacements
  - HVAC damper and controller repair or replacement
  - replacement of air conditioning and heating units with heat pumps
  - window air conditioning replacement with high efficiency units
  - cooling tower retrofits or replacements
  - economizer installation
  - fans and pump replacement or impeller trimming
  - thermal energy storage
  - variable air volume (VAV) retrofit
5. Lighting Improvements, such as, but not limited to
  - interior and exterior lighting replacements
  - lighting control improvements
  - occupancy sensors installation
  - LED exit sign installation
  - daylighting
6. Building Envelope Modifications, such as, but not limited to
  - insulation installation
  - weatherization
  - window replacement
  - reflective solar window tinting
7. Chilled Water, Hot Water, and Steam Distribution Systems, such as, but not limited to
  - piping insulation installation
  - hot water heater repair and replacement
  - steam trap repair and replacement

8. Electric Motors and Drives, such as, but not limited to
  - motor replacement with high efficiency motors
  - variable speed motors or drives
9. Refrigeration, such as, but not limited to
  - replacement of ice/refrigeration equipment with high efficiency units
10. Distributed Generation such as, but not limited to
  - cogeneration systems installation
  - microturbines installation
  - fuel cells installation
11. Renewable Energy Systems, such as, but not limited to
  - photovoltaic system installation
  - solar hot water system installation
  - wind energy system installation
  - passive solar heating installation
  - alternatively fueled vehicle refueling station installation
12. Energy/Utility Distribution Systems, such as, but not limited to
  - transformers installation
  - power quality upgrades
  - power factor correction
  - gas distribution systems installation
13. Water and Sewer Conservation Systems, such as, but not limited to
  - installation of low-flow showerheads
  - installation of low-flow plumbing equipment
  - installation of water efficient irrigation
  - installation of on-site sewer treatment systems
14. Electrical Peak Shaving/Load Shifting, such as, but not limited to
  - thermal energy storage
  - gas cooling
15. Energy Cost Reduction Through Rate Adjustments, such as, but not limited to
  - recommendations for change to more favorable rate schedule
  - recommendations for Government negotiation of lower rates, same supplier
  - recommendations for lower energy cost supplier(s) (where applicable)
  - energy service billing and meter auditing recommendations
16. Energy Related Process Improvements, such as, but not limited to
  - production and/or manufacturing improvements
  - recycling and other waste stream reductions
17. Commissioning, such as but not limited to
  - retro-commissioning services
  - continuous commissioning services

18. Miscellaneous
19. Proposal Development Energy Surveys, such as, but not limited to
  - detailed energy surveys
  - feasibility studies

### **C.2.2 Restrictions on proposed ECMs**

ECMs installed by the Contractor shall not:

1. Jeopardize the operation or environmental conditions of dedicated computers or computer rooms;
2. Increase water consumption; e.g., once through fresh water cooling systems (Note: evaporative cooling technologies may be considered where environmentally appropriate);
3. Result in an adverse effect upon the quality of the human environment or violate any Federal, State, or local environmental protection regulations;
4. Degrade performance or reliability of existing Government equipment;
5. Reduce extra capacity that was intentionally included for future growth, mobilization needs, safety, or emergency back-up;
6. Violate current versions of national codes (e.g., National Electric Code, Uniform Building Code, etc. , State or local building codes; See Section C.5.2); or
7. Creates unsafe conditions or otherwise adversely impacts government facilities, operations, and/or personnel;

Any additional restrictions on ECMs will be specified in delivery orders issued against the contract.

### **C.2.3 Contract Requirements for ECMs**

- (a) Installed ECMs shall comply with the Contract Requirements, and/or with the requirements of each Delivery Order. Contract Requirements also incorporate all Government-approved Contractor submittals, including equipment design; installation specifications; the Design and Construction Package(s); Commissioning Plan; compliance with codes and standards; design drawings; installation schedules; startup and testing procedures; operation and maintenance procedures; and any other submittals required by Delivery Orders issued against the Contract.
- (b) The Contractor may elect to modify, replace, or change the ECM systems and equipment during the term of the Delivery Order from those originally approved. However, any proposed ECM modification, replacement, or change shall require notification and coordination with and approval of the Agency Contracting Officer. Any such ECM modification, replacement, or change of systems or equipment shall be performed by the Contractor at no cost to the Government and shall not interfere with Government

operations and mission.

### C.3 FACILITY PERFORMANCE REQUIREMENTS OF ECMs

Installed ECMs shall meet the performance requirements specified below:

**C.3.1 Environmental & Lighting Conditions:** Modifications to building lighting systems and environmental control systems shall not be permitted to exceed the ranges for Standards of Service specified in Paragraph C.3.2. Where automated controls of lighting or environmental conditions are to be installed, the occupants must have the ability to override the system.

**C.3.2 Standards of Service:** Installed ECM's shall comply with the Standards of Service required for facilities as specified in each delivery order. The standards of service will include acceptable temperature and humidity ranges, air quality parameters, lighting levels, and other related factors.

#### C.3.2.1 HVAC Systems

##### (a) Occupied Areas:

1. Comfort Range:  
65E - 78EF dry bulb  
30% - 60% relative humidity
2. In general occupied areas (except computer rooms) the following setbacks may be performed: During unoccupied periods during the heating season, the temperature may be reduced to 55EF dry bulb. During unoccupied periods during the cooling season, the HVAC system may be turned off. However, the system must be designed so that it will restart if the temperatures approach levels that could damage equipment. In any case, temperatures must be restored to the 65E - 78EF dry-bulb range by the start of the next occupied period.
3. Outside air cannot be reduced below the quantities cubic feet per minute (CFM) per person value found in ASHRAE 62-89 (or most current version), "Ventilation for Acceptable Indoor Air Quality".

##### (b) Computer Rooms

1. Operating Range:  
70E - 74EF dry bulb (or based on Mfr. specs)  
45% - 55% relative humidity
2. No environmental control system temperature setbacks will be allowed in computer rooms.

- (c) The HVAC control system must be compatible with the present energy management control system. Thermostatic tolerance must be within plus or minus one degree Fahrenheit for all areas listed in C.3.2.1(b) and plus or minus two degrees Fahrenheit for

areas in C.3.2.1(a). Any system temperature change required for the operating rooms must not exceed 1 degree F in five (5) minutes.

- (d) Hospitals and other special areas may have special requirements as specified in the delivery order.

**C.3.2.2 Lighting Systems:** Except where special circumstances exist, illumination levels shall be maintained as near as practical to the Illuminating Engineering Society of North America (IES) recommended illumination level.

## **C.4 MEASUREMENT AND VERIFICATION OF ECM PERFORMANCE**

Every delivery order awarded shall include a site-specific Measurement & Verification (M&V) Plan that specifies the M&V requirements and procedures that shall apply to the delivery order based on various factors such as type of ECMs, projected value of energy savings, certainty/uncertainty of savings being achieved, and the intended risk allocation between the Federal agency and the Contractor.

The delivery order M&V plan shall specify the M&V options(s) and method(s) that will be used for each ECM included in the delivery order. M&V options and methods proposed for each ECM shall comply with the latest version of the DOE/FEMP M&V Guideline for Federal Energy Projects in effect at the time of delivery order award.

### **C.4.1 M&V Activities**

The Contractor shall perform the following required M&V activities:

1. Define a site-specific M&V plan for the particular project being installed once the project has been fully defined and the detailed energy survey is completed; this will occur before the delivery order is awarded and the plan will be incorporated into the delivery order.
2. Define pre-installation baseline including (a) equipment/systems, (b) baseline energy use, (c) system performance factors (e.g., lighting levels, temperature setpoints, time clock settings, etc.), and/or (d) actions to determine baseline energy use, which may include site surveys, short term or long term metering, analysis of billing data, and/or engineering calculations. The definition of pre-installation baseline should occur before the delivery order is awarded.
3. Define post installation conditions including (a) equipment/systems, (b) post installation energy use and/or (c) actions to determine post installation energy use which may include site surveys, short-term or long-term metering, analysis of billing data, and/or engineering calculations, and (d) factors beyond the contractor control that influence post-installation energy (e.g. building occupancy, plug load creep, etc.).
4. Conduct annual M&V activities to verify operation of the installed equipment/systems and/or calculation of current year's energy savings.

### **C.4.2 M&V Submittals During Delivery Order Development and Post Award**

- (a) The Contractor shall prepare and submit a general measurement and verification (M&V) approach with its Initial Proposal, identifying the M&V options and methods to determine a site-specific pre-installation baseline and post-installation ECM performance

for each proposed ECM.

- (b) The Contractor shall prepare and submit a site-specific M&V Plan with its Final Proposal per requirements in **Section H.24.1 (b), Attachment 7** of this Contract. This site-specific M&V plan shall include a schedule indicating M&V activities and post-award M&V reporting milestones for each ECM. The approval of this Post-Installation Report shall constitute Government Acceptance of the energy savings performance guarantee.
- (c) The Contractor shall prepare and submit a Post-Installation Report to the Government (**Attachment 2, Item 15**) pursuant to the Post-Installation Reporting Requirements and Submittals (**Attachment 7**) verifying that installed ECMs demonstrate the guaranteed annual energy, energy-related, and water cost savings specified in the awarded Delivery Order. The approval by the Government of this Post-Installation Report shall constitute Government Acceptance of the Contractor's energy savings performance guarantee.
- (d) The Contractor shall prepare and submit an Annual Measurement and Verification Report to the Government **Attachment 2, Item 17** pursuant to **Attachment 7** including data and calculations that demonstrate that continued ECM performance achieves the guaranteed annual energy, energy-related, and water cost savings as required by the Delivery Order.

## C.5 INSTALLATION REQUIREMENTS FOR ECMs

NOTE: Once negotiated and awarded, a delivery order is a fixed-price design/build energy project. Changes to meet design or performance requirements of the delivery order shall be at no cost to the Government. Changes in contractor cost due to Government changes to delivery order requirements will be negotiated as changes.

### C.5.1 Design and Construction Package

- 1. The Contractor shall prepare and submit a design and construction package to the Federal agency for review and approval prior to starting ECM installation in accordance with the delivery order reporting requirements checklist. The design and construction package shall be certified by a registered engineer to assure compliance with applicable building codes and Federal agency design standards. The delivery order will specify site specific requirements of the design and construction package. The Contractor is responsible for the technical adequacy of its work. Acceptance of the design and construction package by the Government shall not relieve the Contractor from responsibility for adequacy of its design and installation work.
- 2. The design and construction package due date will be specified in the delivery order reporting requirements checklist. Upon approval of the design and construction package, bonds may be required in accordance with Section H.17.
- 3. The design and construction package shall be prepared and include at least the following:
  - 1. **Manufacturer's Data** For all ECM equipment to be installed the Contractor shall provide the manufacturer's descriptive literature of equipment including drawings, diagrams, performance and characteristic curves, and catalog cuts.
  - b. **Design Specifications** The Contractor shall identify and reference design specifications applicable to installed ECMs.

- c. Construction Drawings Construction drawings shall be prepared by the Contractor, subcontractor, or any lower-tier subcontractor showing in detail:
    - The installation (i.e., form, fit, and attachment details) of the interface between ECM equipment and existing Government equipment.
    - The location of installed equipment on building floor plans.
    - Certification of ECM Compliance with Building Codes and Standards. The Contractor shall provide registered engineer certification that ECMs comply with all applicable building codes and standards. ECM installation plans submitted to the Agency Contracting Officer without evidence of the professional engineer (PE) certification shall be returned for resubmission.
  - d. Planned Service Interruptions If any utility services must be discontinued temporarily to perform work, such interruptions shall be described and indicated on the project installation schedule. The description shall include the length of the interruption, its time (date, day of week, time of day, etc.), and a justification.
  - e. Site Plan and Compliance with Federal Site Exterior Architectural Plan If an ECM involves the installation of facilities or exterior structures, the Contractor shall provide a site plan showing its location, or show its location on the Government's existing site plan. The Contractor shall also provide a plan and elevation drawings of the facility or exterior structure showing its size and exterior appearance.
  - f. Acquisition of Permits For any ECM installation requiring permits from regulatory agencies (i.e., hot-work permit for welding), the Contractor shall provide its plan and schedule for acquiring such permits.
  - g. Installation Schedules The installation schedule shall show the order in which the Contractor proposes to perform the work and the dates on which the Contractor contemplates starting and completing all major milestones (including acquiring materials, equipment, permits). The schedule shall be in the form of a progress chart of suitable scale to indicate the amount of work scheduled for completion by any given date during the installation period.
4. Design documents will require both a preliminary and final review by the Agency. Each delivery order will specify the submittal requirements associated with each review.

### **C.5.2 Design and Construction Standards**

- 1. A Delivery Order issued against this IDIQ contract award will specify design and construction standards applicable to site or agency specific facility requirements. At a minimum, all ECMs, work, equipment and materials required for ECM installation shall comply with the most recent issue of the design and construction standards indicated in the delivery order as applicable. The following list of standards is provided as a guideline for establishing these requirements.
  - American National Standards Institute (ANSI)

- Code of Federal Regulations (CFR)
    - 29 CFR 1910 Occupational Safety and Health Standards
    - 10 CFR 435 Energy Conservation Voluntary Performance Standards for Commercial and Multi-Family High Rise Residential Buildings
    - 29 CFR 1926 Safety and Health Regulations for Construction
  - National Electric Code (NEC)
  - National Electrical Safety Code (NESC)
  - National Fire Protection Association (NFPA) Standards including, but not limited to NFPA 101 - Life Safety Code
  - National Electrical Manufacturers Association (NEMA).
  - Underwriters Laboratory (UL).
  - Uniform Building Code (UBC)
  - Uniform Plumbing Code (UPC)
  - American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE)
    - ASHRAE 90.1
  - Army Corps of Engineers Safety Manual
  - National Electrical Manufacturers Association (NEMA)
  - National Historic Preservation Act, as applicable
  - Illuminating Engineering Society of North America (IES)
  - American Institute of Architects (AIA) Masterspec
  - Air Conditioning and Refrigeration Institute (ARI)
  - Occupational Safety and Health Administration regulations
  - Other design standards required by the ordering Federal Agency
2. No requirement of this contract shall supersede applicable regulations, local codes and/or standards. Any violation of such regulations and standards shall be brought to the attention of the Agency Contracting Officer for clarification prior to proceeding with the work.
  3. If conflicts between designated applicable codes and/or standards exist, the Agency Contracting Officer's Representative and applicable authority having jurisdiction shall determine the appropriate code to follow.

### **C.5.3 ECM Quality Control Inspection Program**

1. The Contractor shall be responsible for quality control during installation of ECMs. The Contractor shall inspect and test all work performed during ECM installation to ensure compliance with the delivery order's performance requirements. The Contractor shall maintain records of inspections and tests, including inspections and tests conducted by or for utility or other regulatory agencies. The Contractor shall prepare a Quality Control Inspection Program for review and acceptance by the Government. The ECM Quality Control Inspection Program shall be prepared and submitted in accordance with the delivery order reporting requirements checklist.
2. The ECM Installation Quality Control Inspection Program shall detail the procedures, instructions, and reports that ensure compliance with the delivery order and this IDIQ contract. This plan shall include as a minimum:
  - a. The quality control organization, in chart form, showing the relationship of the quality control organization to the Contractor's organization.



- b. Names and qualifications of personnel in the quality control organization.
- c. Area of responsibility and authority of each individual in the quality control organization.
- d. A listing of outside organizations, such as testing laboratories, architects, and consulting engineers that will be employed by the Contractor, and a description of the services these firms will provide.
- e. Procedures for reviewing all shop drawings, samples, certificates, or other submittals for delivery order and indefinite quantity contract compliance, including the name of the person(s) authorized to sign the submittals for the Contractor, as complying with the delivery order and indefinite quantity contract's requirements.
- f. An inspection schedule, keyed to the installation schedule, indicating necessary inspections and tests, the names of persons responsible for the inspections and tests, and the time schedule for each inspection and test.
- g. The procedures for documenting quality control operations, inspection, and testing, with a copy of all forms and reports to be used for this purpose. The Contractor shall include a status log listing all submittals required by the inspection plan and stating the action required by the Contractor or the Government. The Contractor shall also prepare and maintain a testing plan that shall contain a listing of all tests required by the delivery order and/or IDIQ contract requirements.
- h. The Quality Control Inspection Program Plan shall be submitted to the COR for review and approval as a separate stand-alone document after award of the delivery order, along with the required Design and Construction Package. The initial Government review will be completed within fifteen (15) working days of its receipt. The Contractor shall then submit any revisions within fifteen (15) working days after receipt of the Government's notice or request for clarification. After receipt of the requested revised contractor information, the Government's review and approval shall be completed within fifteen (15) working days.

#### **C.5.4 ECM Commissioning**

The Contractor shall assure the Government through the ECM Commissioning that the ECMs performance achieves facility performance requirements as set out in the Delivery Order. The ECM Commissioning shall be accomplished through a process of verification and documentation, from the post-award design phase to Acceptance.

**C.5.4.1 ECM Commissioning Approach** - The Contractor shall submit in it's Final Proposal a severable ECM Commissioning Approach document that utilizes data and factors derived from the Detailed Energy Survey, needed to achieve facility performance requirements in accordance with the Delivery Order contract.

**C.5.4.2 ECM Commissioning Plan** - The Contractor shall provide a Commissioning Plan **Attachment 2, Item 8** that finalizes the Commissioning Approach and addresses each ECM with

specific steps that will be taken during the commissioning process.

**C.5.4.3 ECM Commissioning Report** - The Contractor shall submit a Commissioning Report documenting the ECM's affect upon facility performance requirements in accordance with the Commissioning Plan (**Attachment 2, Item 14**). The approval of this ECM Commissioning Report by the Government shall constitute Acceptance of the Contractor's achievement of facility performance requirements.

## **C.5.5 Environmental Protection**

ECMs shall cause no adverse impacts upon the quality of the human environment. Impacts on air quality (pollutants, noise level, and odors or fumes) and potable water use are examples of potential areas of concern at the project site. Any planned building modifications shall comply with the National Environmental Policy Act (NEPA) and other applicable Federal, state, and local environmental protection regulations. The delivery order will identify specific known hazardous waste handling and storage requirements (e.g., PCB ballasts removed from lighting fixture retrofits).

The contractor shall comply with applicable Federal, state and local laws and with the applicable regulations and standards regarding environmental protection. All environmental protection matters shall be coordinated with the Agency Contracting Officer. Authorized Government officials may inspect any of the contractor's work areas on a no-notice basis during normal working hours. In the event that a regulatory agency assesses a monetary fine against the Government for violations caused by contractor negligence, the contractor shall reimburse the Government for the amount of any fine and other related costs. The contractor shall also clean up any oil spills, hazardous wastes, and hazardous materials resulting from the contractor's operations. The contractor shall comply with the instructions of the cognizant Federal agencies' safety and health personnel to avoid conditions that create a nuisance or which may be hazardous to the health of Government or civilian personnel.

The contractor shall prepare at its expense all documentation necessary to acquire permits to comply with all applicable Federal, state and local requirements prior to implementing affected ECMs in the performance of a delivery order. The contractor shall not receive a notice to proceed with installation until all environmental protection requirements contained in the IDIQ contract and a delivery order have been satisfied.

The contractor shall comply with 40 Code of Federal Regulations (CFR) Section 311, and with the requirements of the latest edition of the applicable Federal agency's Spill Prevention Control and Countermeasures Plan, as required by a delivery order.

## **C.5.6 Service Interruptions**

1. For any planned utility service interruptions, the Contractor shall furnish a request to the Agency Contracting Officer's designated representative for approval at least fifteen (15) working days in advance or as specified in the delivery order. The request shall identify the affected buildings and duration of planned outage.
2. The Government will coordinate with affected tenants and customers as applicable.

3. If the discontinued service is due to any emergency breakdown, the Contractor shall notify the Agency Contracting Officer's designated representative as soon as possible and the Government will notify those affected tenants and customers as applicable.
4. Federal agencies may have additional requirements that apply to specific delivery orders, and if applicable, will be specified in the delivery order. These additional requirements may include liquidated damages for violations of service interruption provisions.

#### **C.5.7 As-Built Drawings**

After completion of installation and Government acceptance of installed ECMs, the Contractor shall submit as-built drawings to the Agency Contracting Officer or his/her designated representative in accordance with agency standards or specifications identified in the delivery order.

### **C.6 OPERATION OF ECMs**

- C.6.1** The Contractor shall be responsible for operation of all Installed ECMs. The operations work effort for Installed ECMs shall include operations tasks at specific stations, continuous or periodic equipment monitoring, and minor on-line equipment adjustments required to achieve all facility and energy conservation performance requirements of the Delivery Order.
- C.6.2** When the implementation of an Installed ECM results in a change in an existing operations work procedure, the Contractor shall prepare a new written operations work procedure for approval by the Agency Contracting Officer.
- C.6.3** Operations of ECMs may be assumed by the Government through a determination by the Agency Contracting Officer. In such cases the Government will operate and maintain the ECM in accordance with the Contractor-provided work procedures. If the Government fails to operate an ECM pursuant to the Contractor-provided work procedures, the Government will compensate the Contractor for losses directly attributable to that action.
- C.6.4** The Contractor shall maintain adequate and necessary records which will be made available during the annual M&V review. Said records will contain at a minimum the ECM affected, initial date of incident, date repair and/or replacement implemented, and description of activities performed and be included in the annual ECM report **(Attachment 2, Item 17)**.

### **C.7 PREVENTIVE MAINTENANCE OF ECMs**

- C.7.1** Preventive maintenance work includes periodic equipment inspections, tests, calibrations, and preventive maintenance tasks and actions required to ensure that systems operate as intended. The Contractor shall be responsible for preventive maintenance of all Installed ECMs, unless this activity is assumed by the Government, in writing, by the Agency Contracting Officer.
- C.7.2** The Contractor shall prepare a written preventive maintenance work procedure for each Installed ECMs. The Contractor shall train Government personnel in the new approved preventive maintenance work procedures.

- C.7.3** If the Government assumes preventive maintenance work, the equipment shall be maintained in accordance with the preventive maintenance work procedures and checklists provided by the Contractor and approved by the Agency Contracting Officer. If the Government fails to perform preventive maintenance per Contractor-provided preventive maintenance procedures and checklists, and the performance of the Installed ECMs is adversely affected, (including manufacturer equipment warranties) the Government will compensate the Contractor for the losses directly attributable to that action.

## **C.8 REPAIR OF ECMs**

- C.8.1** The Contractor shall be responsible for the repair and replacement of all Installed ECMs unless otherwise negotiated by the Agency Contracting Officer.
- C.8.2** Repair of ECMs includes all material and equipment associated with the replacement or rebuilding of facilities, systems, and/or equipment that have failed and/or to be in a condition of diminished ECM performance as determined by the Contractor, and concurred to by the Agency Contracting Officer.
- C.8.3** If equipment failure or damage is a result of Government negligence, the Government will provide repair or replacement. If repaired or replaced by the Contractor as directed by the Government, the Government will reimburse the Contractor for losses attributable to that negligence.

If equipment failure or damage is a result of Contractor negligence, the Contractor will provide repair or replacement at its expense, or if repaired or replaced at Government expense, will reimburse the Government for losses attributable to that negligence.

- C.8.4** If determined appropriate by the Agency Contracting Officer, a Delivery Order under this Contract may provide for the establishment of an escrow account by the Contractor which can accumulate Contract payments to be used by the Contractor for the repair and replacement of equipment installed under the Delivery Order. The Delivery Order shall set out how unused funds in the account will be dispersed at the end of the contract term. Any escrow account so established shall be in accord with federal fiscal law and not alter the rights and responsibilities of the Parties as set out in this Section.

## **C.9 CONTRACTOR MAINTENANCE AND REPAIR RESPONSE TIME**

- C.9.1** The Contractor shall establish a point of contact (name and phone number) for use by the Government in providing response to contractor equipment failures. The point of contact shall be available as specified in the delivery order throughout the delivery order's term. Initial telephone response to repair call messages shall be within the time frame specified in the delivery order. If a site visit is needed to repair equipment, repair personnel shall arrive on site within the time frame specified in the delivery order of the initial telephone response for non-emergency repairs or within the time frame specified within the delivery order for emergency repairs. Although normal contractor access is during the normal work hours specified for the specific site in the delivery order, the Contractor may be granted 24-hour per day access to the buildings for emergency work.
- C.9.2** Emergency maintenance and repair work is defined as maintenance or repair necessary to correct an imminent failure of Section C.3 Standards of Service or any action necessary

to protect the safety or health of the facility occupants and prevent adverse impacts on property.

- C.9.3** In the event the Contractor fails to respond as required in the delivery order and in the event of emergencies, the Government may incur expenses to perform emergency repairs to contractor-installed equipment as well as Government equipment for which the Contractor assumed maintenance and repair responsibilities, and deduct such incurred expenses from future contractor invoices. The Contractor shall hold the Government harmless in such cases where the Contractor fails to respond in emergencies. In addition, the Contractor shall reimburse the Government for any costs incurred, as negotiated and agreed upon by the parties for specific projects.

## **C.10 OPERATIONS AND MAINTENANCE MANUALS AND TRAINING FOR ECMs**

### **C.10.1 Operations and Maintenance Manuals**

The Contractor shall furnish operation and maintenance (O&M) manuals and recommended spare parts lists for O&M of the contractor-installed ECMs and modified Government equipment. O&M plans and spare parts lists shall be submitted prior to Government acceptance of the project, as specified in the delivery order.

### **C.10.2 Government Personnel Training for ECMs**

1. Thirty (30) days prior to the installation completion, the Contractor shall train Government personnel and/or Government Operations and Maintenance (O&M) contractors as required to operate, maintain, and repair ECM equipment and systems in the event of emergencies.
  - a. Training Program - General Requirements: The Contractor shall provide a training program for Government personnel and/or Government O&M contractors for each ECM in a project. The program shall provide instruction on operation, troubleshooting, maintenance, and repair of ECMs. Training shall include both a classroom phase and a practical application phase. The course material shall include the operation and maintenance plans and manuals. The program shall be conducted at the delivery order's specified site(s) in facilities provided by the Government.
2. The Contractor shall train Government personnel and/or Government O&M contractors to operate, maintain, and repair ECM equipment ninety (90) days prior to the end of the delivery order's term.

## **C.11 GOVERNMENT PROJECTS**

There shall be no restriction on Government projects of any kind including those that may provide energy conservation equipment, the removal of existing energy consuming equipment, or the addition of new energy consuming equipment for mission needs. The Government shall notify the Contractor when Government projects are to be implemented which may impact the installation or operations of contractor-installed ECMs. If the Government project affects determination of annual energy savings, then a baseline adjustment will be negotiated and incorporated into the delivery order by modification.

## **C.12 UTILITY OR SYSTEM BENEFIT FUND ENERGY EFFICIENCY/RENEWABLE PROJECT FINANCIAL INCENTIVES**

The Contractor shall be responsible for determining the source, value, and availability of any applicable financial incentives to the project offered by the local utility serving the facility and/or the state in which the facility is located, and if the value of the incentives exceeds the administrative costs to be incurred by the Contractor or the Government in acquiring such incentives.

The Contractor shall be responsible for coordinating with the Agency Contracting Officer as to the preparation of any and all documentation required to apply for any such applicable financial incentives and to effectively apply such incentives to the project.

## **C.13 AVAILABILITY OF UTILITIES**

The Government will furnish water and electric current at existing outlets as may be required for the installation work to be performed under a delivery order at no cost to the Contractor. The Contractor at its expense and in a workmanlike manner satisfactory to the Agency Contracting Officer shall install and maintain all necessary temporary connections and distribution lines for each utility. Information concerning the location of existing outlets may be obtained from the Contracting Officer or the Contracting Officer's designated representative. The Contractor shall remove all the temporary connections, distribution lines, and associated equipment upon completion of the installation work.

## **C.14 GOVERNMENT FURNISHED PROPERTY AND CONTRACTOR FURNISHED MATERIAL**

The Contractor shall provide all materials and supplies necessary to perform the work as specified in the delivery order. Materials and supplies provided shall be of acceptable industrial grade and quality and in compliance with any applicable standards (see Section C.5.2). All such materials and supplies must be compatible, and operate safely within design parameters of existing systems equipment.

As an ESPC contract presumes that all property will be furnished by the Contractor, a provision in a delivery order issued against this contract for specified Government Furnished Property for performance of this contract is not expected to normally occur. However, should Government Furnished Property be required or considered appropriate for a delivery order award, it would be designated and identified at this numbered provision in the delivery order request for proposal for the delivery order project.

## **C.15 CONTRACTOR EMPLOYEES**

- (a) Upon receipt of notice of award of a delivery order project under this contract, the Contractor shall provide the Agency Contracting Officer for the delivery order, or the Agency COR, with the name(s) of the responsible supervisory person(s) authorized to act for the Contractor.
- (b) The Contractor shall furnish sufficient personnel to perform all work specified within the delivery order.
- (c) Contractor employees shall conduct themselves in a proper, efficient, courteous, and businesslike manner.
- (d) The Contractor shall remove from the site any individual whose continued employment is deemed by the Agency Contracting Officer or the Agency COR, acting reasonably, to be

contrary to the public interest or inconsistent with the best interests of Government business or national security.

- (e) No employee or representative of the Contractor will be admitted to the work site unless that employee furnishes satisfactory proof that he/she is a citizen of the United States or otherwise legally authorized to work in the United States.

## **C.16 FIRE PREVENTION**

The Contractor shall ensure that its employees shall know how to activate a fire alarm. The Contractor shall observe all requirements for handling and storing combustible supplies, materials, waste and trash. Contractor employees operating critical equipment shall be trained to properly respond during a fire alarm or fire in accordance with the applicable agency's fire prevention procedures, rules or regulations as identified in the delivery order. The Contractor shall obtain all required welding permits prior to any welding.

## **C.17 SALVAGE**

All material and equipment removed or disconnected during the implementation phase of a delivery order issued under this contract shall remain the property of the Government and shall be included in the proposal for each ECM. The Government will identify the equipment it wants stored. Any material and equipment not to be stored and all debris resulting from work under a delivery order shall be removed from the site by the Contractor at his expense.

## **C.18 ASBESTOS AND OTHER HAZARDOUS MATERIALS**

As part of each ECM project proposed, it is preferred that the contractor include the cost of removal of any known hazardous-containing material in each contractor-proposed ECM that involves the removal of such. If the need for removal of hazardous material is known by the Contractor, but the cost is not included in the ECM project proposal, this need shall be identified by the contractor in the proposal.

Should the contractor propose and receive an award for an ECM project, and hazardous material is identified after award, the contractor shall immediately stop work, take measures to reduce the Contractor or building personnel contamination, and immediately notify the Agency Contracting Officer and the building manager of the hazardous material condition and location. The Government shall then either:

- (a) remove and dispose of the material itself, by its own personnel or by separate contract award; or
- (b) give the contractor the option of either a delivery order modification for removing and disposing of the material at its expense, via a renegotiation of either the guaranteed savings and contractor payments for the project and/or of the delivery order project term, or by separate award for the effort. If the contractor performs the effort, he shall be required to remove the hazardous material in the manner agreed upon by the parties, and any equitable adjustment necessary due to the change to or elimination of the ECM involved shall be handled as a delivery order modification.

In addition, hazardous material and PCB handling and disposal, if it is or becomes the responsibility of the Contractor in a delivery order award, shall be handled as follows:

- (a) **Hazardous Material Handling and Disposal:** Hazardous wastes resulting from contractor-owned material and equipment must be disposed of in accordance with Resource Conservation and Recovery Act and all applicable Federal, state and local regulations. All shipping manifests for hazardous waste must be signed by the authorized Federal personnel for the project site, as well as by the Contractor prior to transfer off-site. The Federal agency's generator number will be entered on the manifest. The delivery order will provide additional site specific requirements.
- (b) **PCB Handling and Disposal:** If PCB ballasts exist at a site covered by a delivery order, then the delivery order shall contain the necessary clause addressing PCB recycling and/or disposal requirements to comply with applicable state and local regulations. The delivery order will provide additional site specific PCB handling and disposal requirements (if applicable).

Specific delivery orders will specify the requirements if different than the above, and/or as known at time of award.

## C.19 DISPOSAL

Non-hazardous debris, rubbish and nonusable material resulting from the work shall be removed from Government property by the contractor at its expense.

## C.20 SAFETY REQUIREMENTS

All work shall be conducted in a safe manner and shall comply with the requirements in the Army Corps of Engineers Safety manual and the Accident Prevention clause in Section I of this contract (FAR 52.236-13). The Government will not provide safety equipment to the Contractor. Additional safety requirements may be included in delivery orders based on individual Federal agency implementing regulations, and/or specific requirements of the delivery order projects.

Other specific requirements relative to safety are as follows:

- (a) Prior to commencing work, the Contractor shall meet with the Agency Contracting Officer and the Agency COR to agree upon administration of the safety program.
- (b) The contractor's workplace may be inspected periodically for OSHA violations. Abatement of violations shall be the responsibility of the Contractor and/or the Government as determined by the Agency Contracting Officer. The Contractor shall provide assistance to the Government representative and Federal or state OSHA inspector if a complaint is filed. Any fines levied on the Contractor by Federal or state OSHA offices due to safety/health violations will be paid promptly by the contractor.
- (c) In accordance with the Accident Prevention clause in Section I of this contract, the contractor shall report to the Agency Contracting Officer or COR all accidents within 24 hours of their occurrence.
- (d) In accordance with the Accident Prevention clause in Section I of this contract, the contractor shall submit to the Agency Contracting Officer or Agency COR a full report of damage to Government property and equipment by contractor's employees or contractor's subcontractors, at any tier. All damage reports shall be submitted to the Agency Contracting Officer or COR within 24 hours of their occurrence.



- (e) A safety and health plan and hazard analysis shall be prepared prior to the start of work on a construction site.

## C.21 SECURITY REQUIREMENTS

- (a) **Passes and Badges:** All contractor employees shall obtain employee and vehicle passes and badges as required by the agency for the specific delivery order project site. The Contractor shall, prior to the start of on-site work, submit to the Agency Contracting Officer, or the Agency Contracting Officer's designated representative, an estimate of the number of employees expected to be utilized at any one time on the delivery order. The Government will issue badges it requires without charge. When an employee leaves the contractor's service, the employee's pass and badge shall be returned within ten (10) days.
- (b) **Contractor Vehicles:** Each contractor vehicle shall display the contractor's name such that it is clearly visible. Contractor vehicles shall, at all times, display a valid state license plate and safety inspection sticker. The Government may issue vehicle passes as it determines, and these shall also be displayed so as to be clearly visible.
- (c) **Contractor Access to Buildings:**
  - 1. It shall be the contractor's responsibility, through the Agency Contracting Officer or the Agency COR's designated representative, to obtain access to buildings on the delivery order project site, as necessary, and arrange for the buildings to be opened and closed as follows:
    - i. For minor work of two hours or less duration, the contractor shall contact the building manager and security organization.
    - ii. For major work, defined as work in excess of two hours duration, and/or work that will create dust or noise, the contractor shall contact the Agency Contracting Officer or the Agency Contracting Officer's designated representative at least one week in advance of the start of the work. The contractor must provide a description of the work, the number of workers required, and duration of the work.
  - 2. Keys may be issued to the contractor; however, it shall be the contractor's responsibility to make adequate arrangements for security of the building at the end of each work day. The contractor shall be responsible for the cost of replacing any keys that are furnished to and lost by its employees. If the Agency Contracting Officer or the Agency COR decides that a lock must be replaced because of the loss of a key by the contractor's employee(s), the contractor shall pay the cost of that replacement. Similarly, the contractor shall pay the cost of changing a combination if the Agency Contracting Officer or the Agency COR has reasonable cause to assume that the combination has been compromised.
  - 3. Access to tenant spaces must be scheduled with the Agency Contracting Officer or the Agency Contracting Officer's designated representative at least ten (10) days in advance, unless otherwise indicated in the delivery order. Notice must include names of employees to be admitted, expected arrival time, and visit duration. Buildings that require an escort will be identified in the solicitation for

a specific project. All access will be during normal working hours, Monday through Friday, as specified in the delivery order.

- (d) **Contractor Access to secure areas:** Certain areas of a project site may require that the contractor and its employees have an escort, and/or place limits on the days and times that the contractor and its employees may work in these areas. Specific delivery orders will identify any such secure areas and the requirements for contractor access to them.

## **C.22 PERMITS**

In accordance with the "Permits and Responsibilities" clause in Section I, the contractor shall, without additional expense to the Government, obtain all appointments, licenses, and permits required to conduct the work. The contractor shall comply with all applicable Federal, state and local laws. Evidence of such permits and licenses shall be provided to the Agency Contracting Officer or the Agency COR before work commences.

## **C.23 WORK SCHEDULE REQUIREMENTS**

The contractor shall arrange its on-site work so that it will not interfere with normal Government business. The contractor shall develop a monthly work schedule for all on-site work performed from delivery order award through implementation and performance periods for all ECMs. In no event shall the contractor change approved work schedules without the prior consent of the Agency Contracting Officer or the Agency Contracting Officer's designated representative.

If the contractor desires to work on Saturday, Sunday, holidays, or outside the project site's normal working hours, which normal working hours will be specified in the delivery order, it may submit a request for approval to the Agency COR at least seven (7) working days prior to the proposed start of such work.

## **SECTION D — PACKAGING AND MARKING**

### **D.1 PACKAGING (APR 1984)**

Preservation, packaging, and packing for shipment or mailing of all deliverables against either this contract or any delivery orders issued against this contract, shall be in accordance with good commercial practice and adequate to insure acceptance by common carrier and safe transportation at the most economical rates.

### **D.2 MARKING (APR 1984)**

- (a) Each package, report or other deliverable against this contract, as well as against specific delivery orders issued against this contract, shall be accompanied by a letter or other document which:
  - 1. Identifies the contents, the sender, the applicable delivery order number, the IDIQ contract number, and the individual/office to which the reports or other products are being sent;
  - 2. Identifies the deliverable Item Number or Report Requirement which requires the delivered item(s); and
  - 3. Indicates whether the Contractor considers the delivered item to be a partial or full satisfaction of the requirement.
- (b) For any package, report or other deliverable being delivered to a party other than the Contracting Officer (either the DOE Contracting Officer for this contract or the Agency Contracting Officer for a specific delivery order), a copy of the document required in (a) above shall be simultaneously provided to the Agency Contracting Officer for the office administering the delivery order, as identified in Section G of the delivery order, or if none, to the Contracting Officer for this contract, identified in Section G of this contract.

### **D.3 RESPONSIBILITY**

The contractor shall be responsible for acquiring, shipping, marking, packaging, storing, and installing (and maintaining if indicated in the delivery order) all supplies, equipment, and materials required to implement ECMs accepted and approved by the Agency Contracting Officer during negotiations.

### **D.4 DELIVERY AND STORAGE**

The contractor shall properly store, adequately protect and carefully handle all equipment and materials to prevent damage. Delivery orders may specify any special state and local or agency-specific requirements for hazardous waste handling, storage, shipping and disposal as required for known or anticipated generation of hazardous waste.

## SECTION E — INSPECTION AND ACCEPTANCE

### E.2 ACCEPTANCE

**E.2.1** Execution by the Agency Contracting Officer of a Delivery Order under this Contract constitutes acceptance of the Final Proposal as offered by the Contractor.

**E.2.2** Government Acceptance, for purpose of payment under Section G.3 occurs when the following approvals are completed: approval by the Agency Contracting Officer of the Contractors Post-Installation Report (**Section C.4.2(c)**) and the approval by the Agency Contracting Officer of Contractor's ECM Commissioning Report (**Section C.5.4.3**), and the project inspection and acceptance is obtained pursuant to **Section E.4**.

### E.3 FAR 52.246-12 INSPECTION OF CONSTRUCTION - FIXED PRICE (AUG 1996)

(a) Definition.

"Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Agency Contracting Officer for the specific project, and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) Government inspections and tests are for the sole benefit of the Government and do not:

1. Relieve the Contractor of responsibility for providing adequate quality control measures;
2. Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
3. Constitute or imply acceptance; or
4. Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) below.

(d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Agency Contracting Officer's written authorization.

- (e) The Contractor shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Agency Contracting Officer. The Government may charge to the contractor any additional cost of inspection or test when work is not ready at the time specified by the contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Any special and performance tests shall be performed as described in the contract.
- (f) The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The contractor shall promptly segregate and remove rejected material from the premises.
- (g) If the Contractor does not promptly replace or correct rejected work, the Government may:
  - 1. by contract or otherwise, replace or correct the work and charge the cost to the contractor; or
  - 2. terminate for default the Contractor's right to proceed.
- (h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or non-conforming in any material respect due to the fault of the contractor or its subcontractors, the contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Agency Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- (i) Unless otherwise specified in the contract or any delivery order, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or delivery order, or that portion of the work the Agency Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.

#### **E.4 INSPECTION AND ACCEPTANCE OF INSTALLED ECMs**

Each delivery order will include specific inspection and acceptance criteria pertinent to the delivery order project. The following general inspection and acceptance requirements shall apply to each delivery order, unless otherwise indicated in the delivery order:

- (a) The Contractor shall arrange for the inspection of construction work and construction oversight to verify that the energy efficiency equipment and/or system modifications are properly supplied as designed and specified, and installed in accordance with the approved installation plan, all applicable codes and standards, the delivery order specifications and in a manner that will provide the intended long-term function, energy savings, and performance of the equipment. (Reference the requirement for Building

Commissioning in paragraph C.5.4.) Any monitoring and verification of equipment and systems installed shall be consistent with requirements defined in the approved M&V plan. All start-up and testing shall be conducted in the presence of the Agency COR.

- (b) The Agency Contracting Officer will accept the project installation in writing, in accordance with Section G.3.(a), upon satisfactory completion of the required 30-day test period, and upon receipt of all other required deliverables.
- (c) Each delivery order may include additional agency-specific or site-specific inspection and acceptance requirements, and timeframes for completion. The Contractor shall review each delivery order to determine the recommended applicable inspection and acceptance requirements for that delivery order.

#### **E.5 FAR 52.246-4 INSPECTION OF SERVICES - FIXED-PRICE (AUG 1996)**

- (a) Definitions.  
  
"Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) If any of the services do not conform with contract requirements, the Government may require the contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Government may:
  - 1. require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and
  - 2. reduce the contract price to reflect the reduced value of the services performed.

- (f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may:
  - 1. by contract or otherwise, perform the services and charge to the contractor any cost incurred by the Government that is directly related to the performance of such service; or
  - 2. terminate the contract for default.

**E.6 FAR 52.246-20 WARRANTY OF SERVICE (APR 1984)**

- (a) Definitions:

"Acceptance," as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, or approves specific services, as partial or complete performance of the contract delivery order.

"Correction," as used in this clause, means the elimination of a defect.

- (b) Notwithstanding inspection and acceptance by the Government or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract and its deliver orders will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Agency Contracting Officer shall give written notice of any defect or nonconformance to the Contractor within 30 days from the date the defect or non-conformance is detected by the Government. This notice shall state either (1) the Contractor shall correct or reperform any defective or nonconforming services, or (2) that the Government does not require correction or reperformance.
- (c) If the Contractor is required to correct or reperform, it shall be at no cost to the Government, and any services corrected or reperformed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Agency Contracting Officer may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the Government thereby, or make an equitable adjustment in the contract price.
- (d) If the Government does not require correction or reperformance, the Agency Contracting Officer shall make an equitable adjustment in the contract price.

## **SECTION F — DELIVERIES OR PERFORMANCE**

### **F.1 PERIOD OF PERFORMANCE OF INDEFINITE DELIVERY/INDEFINITE QUANTITY (IDIQ) CONTRACT AND DELIVERY ORDERS**

The contractor shall be required to commence work under this contract only upon issuance of delivery orders against it. The contractor shall be required to commence work on specific delivery orders within the number of days specified in the delivery order, and once the contractor has received a notice to proceed. The contractor shall then prosecute the work diligently and complete the installation of all energy conservation measures (ECMs) in accordance with the schedule established in the delivery order.

#### **F.1.1 Contract Term**

The Contract Term shall consist of a performance period not to exceed twenty-five (25) years from date of Delivery Order award, but with a limitation on the ordering period for placement of Delivery Orders, beginning on October 28, 2004 through September 30, 2006.

#### **F.1.2 Delivery Order Term**

The delivery order term shall be specified in each delivery order. The delivery order term is comprised of the implementation period for installation of all ECMs after award as indicated on Schedule DO-1 (in months), plus the energy savings performance period, as indicated on Schedule DO-1 (in years). In no event shall a delivery order's term exceed twenty-five (25) years total.

### **F.2 PRINCIPAL PLACE OF PERFORMANCE (APR 1984)**

The principal place of performance will be specified in each delivery order issued against this contract.

### **F.3 DELIVERABLES**

There are no specific deliverables for delivery orders included in this contract. The contractor shall, however, be required to submit the deliverables specified in the reporting requirements included in each specific delivery order, in accordance with the instructions contained in them, as well as in accordance with the provisions in Section D of this contract. (As also indicated in Section B.1, a Sample Reporting Requirements Checklist for Delivery Orders is found in Part III, Section J, Attachment 2 to the contract.)



## **SECTION G — CONTRACT ADMINISTRATION DATA**

### **G.1 CONTRACT ADMINISTRATION FOR THE GOVERNMENT**

- (a) ADMINISTRATION OF THE CONTRACT: Administration of this Contract shall be accomplished by the Department of Energy's Golden Field Office and the DOE *[insert]* Regional Office. The following individuals in these offices are responsible for that administration as follows:
1. DOE Contracting Officer: The Contracting Officer for this Contract is Joyce L. Ziesler, telephone no.: (303) 275-4725; fax no.: (303) 275-4788. E-mail: Joyce.ziesler@go.doe.gov. The Contractor shall use the DOE Contracting Officer as the focal point for all matters regarding this Contract except technical matters.
  2. DOE Contracting Officer's Representative (COR): The Contract COR for projects in the DOE *[insert]* Region is *[insert]*, telephone no.: (XXX) XXX-XXXX; fax no.: (XXX) XXX-XXXX; e-mail: *[insert]*. The Contractor shall use the COR as the focal point for all technical matters ONLY.

### **G.2 INVOICING INSTRUCTIONS**

The contractor shall submit invoices in accordance with the specific instructions provided in each delivery order issued against this contract. These instructions will vary by ordering agency, and will include invoice format, invoice contents and any required attachments or enclosures, submission and addressing instructions, etc. Included with each invoice will be ECM performance data as required by the site-specific M&V Plan, unless not required by the delivery order.

### **G.3 INVOICE SUBMITTALS FOR DELIVERY ORDER PROJECTS**

- (a) Payments will commence when all ECMs have been installed and Acceptance by the Government is obtained as required under Section E.
- (b) The frequency of payments from the government to the Contractor shall be as negotiated and specified in the Delivery Order.

### **G.4 PAYMENT TO THE GOVERNMENT FOR ANNUAL GUARANTEED SAVINGS SHORTFALL**

- (a) If the Contractor fails to meet the annual performance requirement as verified by the Measurement and Verification documents, the Government shall adjust the payment schedule to recover the Government's overpayments in the previous year and to reflect the lower performance level into the current year.
- (b) When the ECM performance level is restored, the Government will adjust the Contractor payment schedule accordingly.

## **SECTION H - SPECIAL CONTRACT REQUIREMENTS**

### **H.1 CONFIDENTIALITY OF INFORMATION (APR 1984)**

- (a) To the extent that the work under this Contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor, shall, after receipt thereof, treat such information as confidential and agree not to appropriate such information to its own use or to disclose such information to third parties unless specially authorize by the Contracting Officer in writing. The foregoing obligations, however shall not apply to:
1. Information which, at the time of receipt by the Contractor, is in the public domain;
  2. Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
  3. Information which the Contractor can demonstrate was in his possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;
  4. Information which the Contractor can demonstrate was received by it from a third party that did not require the Contractor to hold it in confidence.
- (b) The Contractor shall obtain the written agreement, in a form satisfactory to the Agency Contracting Officer, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the Contract.
- (c) The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material aspects to the provisions of this section, with each company supplying information to the Contractor under this Contract, and to supply a copy of such agreement to the Contracting Officer. From time to time upon request of the Agency Contracting Officer, the Contractor shall supply the Government with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the Contractor received such information.
- (d) This section shall flow down to all sub-contracts.

### **H.2 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR**

The Representations, Certifications, and Other Statements of the Contractor for this Contract, dated *[insert by ESCO into awards]*, are incorporated by reference. They are located in the official Contract file for the award.

Additional representations and certifications may be required by the Agency Contracting Officer for specific Delivery Order awards.

### **H.3 TECHNICAL DIRECTION (JAN 1990)**

- (a) Performance of the work under this Contract shall be subject to the technical direction of the Contracting Officer's Representative (COR) identified in **Section G.1 (a)** of this Contract, or of the Agency COR for a specific Delivery Order issued against this Contract. "COR" and "Contracting Officer" throughout this provision refer to either the DOE or Agency personnel, as applicable, and/or indicated. The term "technical direction" is defined to include:
  - 1. Directions to the Contractor which redirect the Contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the Contractual Statement of Work.
  - 2. Provision of written information to the Contractor which assists in the interpretation of drawings, specifications or technical portions of the work description.
  - 3. Review and, where required by the Contract, approval of technical reports, drawings, specifications and technical information to be delivered by the Contractor to the Government under the Contract.
- (b) Technical direction must be within the scope of work stated in the Contract. The COR does not have the authority to, and may not, issue any technical direction which:
  - 1. Constitutes an assignment of additional work outside the Statement of Work;
  - 2. Constitutes a change as defined in the Contract clause entitled "Changes";
  - 3. Causes an increase or decrease in the total price or the time required for Contract performance;
  - 4. Changes any of the expressed terms, conditions or specifications of the Contract; or
  - 5. Interferes with the Contractor's right to perform the terms and conditions of the Contract.
- (c) All technical direction shall be issued in writing by the COR.
- (d) The Contractor shall proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this section and within his authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (b) (1) through (5) above, the Contractor shall not proceed but shall notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and shall request the Contracting Officer to modify the Contract accordingly. Upon receiving the notification from the Contract, the Contracting Officer shall:
  - 1. Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is within the scope of the Contract effort and does not constitute a change under the "Changes" section of the Contract;
  - 2. Advise the Contractor within a reasonable time that the Government will issue a written change order.

- (e) A failure of the Contractor and the Contracting Officer to agree that the technical direction is within the scope of the Contract, or a failure to agree upon the Contract action to be taken with respect thereto shall be subject to the provisions of the clause entitled “Disputes Alternate I” of the Contract.

#### **H.4 MODIFICATION AUTHORITY (APR 1984)**

Notwithstanding any of the other provisions of this Contract, the Contracting Officer shall be the only individual authorized to:

- (a) accept nonconforming work;
- (b) waive any requirement of this Contract, or
- (c) modify any term or condition of this Contract.

#### **H.5 GOVERNMENT PROPERTY AND DATA (MODIFIED) (JAN 1992)**

Except as otherwise authorized by the Contracting Officer in writing, the Contractor is not authorized to acquire as a direct charge item under this Contract any real or personal property items. The Agency Contracting Officer for a specific Delivery Order issued against this Contract may authorize the acquisition of Government property or data, as agreed upon and indicated in the specific Delivery Order.

#### **H.6 GOVERNMENT PROPERTY REGULATIONS**

The Contractor and its employees shall be knowledgeable of and observe all Government property regulations, posted or otherwise, at the site where performance occurs for specific Delivery Order projects. A copy of the applicable agency regulations for the specific project site will be provided by the Agency COR for the project, upon Contractor request.

#### **H.7 RESPONSIBILITY FOR LOSS OR DAMAGE TO CONTRACTOR PROPERTY**

The Government shall be responsible for loss or damage to the property of the Contractor and its employees only to the extent authorized by the Federal Tort Claims Act.

#### **H. 8 SUBCONTRACTS (MODIFIED) (SEP 1996)**

- (a) Prior to the placement of sub-contracts and in accordance with the section, “Sub-Contracts – Fixed-Price Contract,” the Contractor shall ensure that:
  - 1. They contain all of the clauses of this Contract (altered when necessary for proper identification of the Contracting parties) which contain a requirement for such inclusion in applicable sub-contract. Particular attention should be directed to the potential flowdown applicability of the clauses entitled “Utilization of Small Business Concerns” and “Small Business Sub-Contracting Plan” contained in **Part II, Section I** of the Contract;
  - 2. Any applicable sub-contractor Representations and Certifications are obtained; and

3. Any required prior notice and description of the sub-contract is given to the Agency Contracting Officer and any required consent is received. Except as may be expressly set forth therein, any consent by the Agency Contracting Officer to the placement of sub-contracts shall not be construed to constitute approval of the sub-Contractor or any sub-contract terms and conditions, determination of any price revision of the Delivery Order issued against this Contract or any of the respective obligations of the parties thereunder, or creation of any sub-contractor privity of Contract with the Government.
- (b) The Contractor shall also obtain and furnish to the Agency Contracting Officer either an Organizational Conflict of Interest (OCI) Disclosure Statement or Representation form in accordance with DEAR 952.209-72 "Organizational Conflicts of Interest Disclosure or Representation" for all sub-contractors to be utilized under this Contract at DOE project sites. No work shall be performed by the sub-contractor until the Agency Contracting Officer has cleared the sub-contractor for OCI.

#### **H.9 ADDITIONAL DELIVERY ORDER CLAUSES FOR WORK ON DEPARTMENT OF ENERGY (DOE) FACILITIES HAVING CLASSIFIED INFORMATION**

- (a) If the ECM project covered by a Delivery Order involves work to be performed at a Department of Energy facility that has classified information (Section 41 of the Atomic Energy Act of 1954, as amended), DEAR 952.204-2 SECURITY (SEP 1997) may apply to that Delivery Order. The specific Delivery Order for such site shall incorporate these clauses, if applicable. In addition a new contractor shall comply with all security requirements as specified on the Delivery Order.
- (b) If the ECM project covered by a Delivery Order involves work to be performed at a Department of Energy facility that has classified information (Section 41 of the Atomic Energy Act of 1954, as amended), the Contractor may be required to submit its representation concerning DEAR 952.204-73 FOREIGN OWNERSHIP, CONTROL OR INFLUENCE OVER CONTRACTOR (JUL 1997), AND THE CLAUSE dear 952.204-74 FOREIGN OWNERSHIP, CONTROL OR INFLUENCE OVER CONTRACTOR (APR 1984) may apply to that Delivery Order. The solicitation for such site would request the representation, and the specific Delivery Order for such site would incorporate the clause, if applicable.

#### **H.10 USE OF NON-FEDERAL PERSONNEL IN EVALUTIONS**

The Government requires non-government personnel from Federally-Funded Research and Development Centers (FFRDCs) and their sub-contractors as advisors in proposal evaluation and as project facilitators for Delivery Order projects because aspects of the technical proposal evaluations and project facilitation requires specialized training, experience and skills available from the FFRDCs that are not available in the Department of Energy.

#### **H.11 FLOWDOWN OF SAFETY AND HEALTH CLAUSE (JAN 1993)**

The clauses at DEAR 952.223-17 and DEAR 970.5204-2, appropriately adjusted to reflect the Contractor/sub-contractor relationship, shall be included in sub-contracts awarded under this Contract if the sub-contractor will be performing work under the sub-contract at a government-owned or leased facility where DOE has required the Contractor to submit a management program and implementation plan (MPIP) in accordance with DEAR 970.5204-2. However, DOE reserves the right to require the

Contractor to submit sub-contractor MPIPs to the Agency Contracting Officer for review prior to approval by the Contract and prior to the start of work.

#### **H.12 QUALITY ASSURANCE SYSTEM (DEC 1995)**

In the conduct of the work performed under this Contract, the Contractor agrees to establish and/or maintain the quality assurance system described in the Delivery Order issued against this Contract. If the Contractor has responsibility to perform activities in connection with a nuclear facility, as defined by Title 10, Section 830.3, Code of Federal Regulations, the applicability of the requirements in Section 830.120 shall be determined. Any sub-contracts in support of this work shall require sub-contractors to comply with the Contractor's quality assurance system.

#### **H.13 WAGE DETERMINATIONS AND DAVIS BACON WAGE RATES**

In the performance of Delivery Order projects issued against this Contract, the Contractor shall comply with the requirements of any applicable U.S. Department of Labor Wage Determination(s) and Wage Rates which may be issued, or are otherwise applicable relative to that project. A copy of the Wage Determination(s) and/or Wage Rates shall be attached to the Delivery Order award, in accordance with agency format requirements, or otherwise provided or referenced.

#### **H.14 LIQUIDATED DAMAGES**

Delivery Orders under this Contract may include liquidated damages as specified in the Delivery Order.

#### **H.15 TITLE TO AND RESPONSIBILITY FOR CONTRACTOR-INSTALLED EQUIPMENT**

Title to all equipment installed by the Contractor shall be vested in the Government after Acceptance by the Government, and shall not relieve the Contractor's responsibility for ECM performance. Title may be vested in the Contractor as determined by the Contracting Officer. Consideration that should be taken into account by the Contracting Officer in vesting title in the Contractor should include use of financial incentives by the Contractor for the project such as production tax credits and/or other incentives.

#### **H.16 REQUIRED INSURANCE**

- (a) The Contractor shall procure at its expense and maintain during the entire period of performance under this IDIQ Contract and the Delivery Orders awarded to the Contractor against it, the following minimum insurance coverage:
  - 1. Comprehensive general liability: \$500,000 per occurrence.
  - 2. Automobile liability: \$200,000 per person, \$500,000 per occurrence, \$20,000 per occurrence for property damage.
  - 3. Workman's compensation: As required by Federal and state workers' compensation and occupational disease statutes.
  - 4. Employer's liability coverage: \$100,000 except in states where workers' compensation may not be written by private carriers.
  - 5. Other insurance as required by State law.

(b) Specific Delivery Orders may require less, additional, or different insurance coverage, which will be specified in the Delivery Order. If different insurance coverage is specified as required for a specific Delivery Order project, the Contractor shall maintain at its own expense for the Delivery Order term, the revised insurance coverage, in accordance with the following:

1. Prior to commencement of work, the Contractor shall furnish to the Agency Contracting Officer a copy of the insurance policy endorsement. The policies evidencing required insurance coverage shall contain an endorsement to the effect that cancellation or any material change in the policies adversely affecting the interests of the Government in such insurance shall not be effective for such period as may be prescribed by the laws of the State in which the Delivery Order is to be performed and in no event less than thirty (30) days after written notice thereof to the Agency Contracting Officer.
2. The Contractor agrees to insert the substance of this clause in all sub-contracts hereunder.
3. Nothing herein shall relieve or limit the Contractor of liability for losses and damages to person or property as a result of its operations. The Contractor shall indemnify and hold harmless the Government from any and all liability associated with the Contractor's operations.

#### **H.17 NOTICE OF PAYMENT AND PERFORMANCE BOND REQUIREMENTS**

The Contractor shall use standard bond forms, SF-25 and SF25A, or other agency-required documentation as required for a Delivery Order project. The Bonds shall be in accordance with the following clause **H.17.1** below.

1. Within 30 days of award of the delivery order or acceptance of the Design and Construction Package, whichever is later, the selected contractor shall furnish a certified copy and duplicate of a performance bond, with project financier as co-beneficiary along with the Government. The performance bond shall be in a penal sum equal to 100 percent of the total Bonded Amount for all ECMs cited in Schedule DO-2. The selected contractor shall furnish a payment bond (Standard Form 25A) in duplicate. The payment bond shall be in a penal sum equal as follows:

<u>From Schedule DO-2</u>	<u>Payment Bond Penal Sum</u>
\$0 - \$999,999	50% of Schedule DO-2 Bonded Amount
\$1 - \$5 million	40% of Schedule DO-2 Bonded Amount
>\$5 million	\$2.5 million

2. The performance and payment bonds shall remain in effect during the total implementation period for all ECMs. The ECM implementation period shall include all time required for installation, testing, measuring initial performance, and Government acceptance of all installed ECMs. The performance bond shall be released upon Government acceptance of all contractor-installed ECMs. The payment bond shall be released upon receipt of satisfactory evidence that all subcontractors, laborers, etc., have been paid in full.

### **H.17.1 PERFORMANCE BONDS BY CONTRACTOR OR THIRD PARTY**

1. Contractor Performance Bonds: Pursuant to **Section H.26**, Preaward Requirements, the selected Contractor shall furnish acceptable evidence of a surety's commitment to provide performance and payment bonds to the Government.
2. Third Party Surety Commitment: Pursuant to **Section H.26**, Preaward Requirements, the selected Contractor shall provide, to the Government, proof of project financing and acceptable evidence of a surety's commitment to provide performance and payment bonds.
3. Required Deliverables: Within 30 days after award of Delivery Order or acceptance of the Design and Construction Package, whichever is later, the selected Contractor shall provide a Performance Bond (Standard Form 25 or other) and a Payment Bond (Standard Form 25A or other) in duplicate. If Performance Bonds are to be provided by a third party, the Contractor shall furnish a certified copy and duplicate of a Performance Bond, with project financier as co-beneficiary along with the Government. The selected Contractor shall furnish a Payment Bond (Standard Form 25A) in duplicate.

The Performance Bond shall be in a penal sum equal to 100 percent of the estimated project cost of all ECMs set out in **Schedule DO-2**.

The Performance and Payment Bonds shall remain in effect during the Implementation Period for all ECMs. The ECM Implementation Period shall include all time required for installation, testing, measuring initial performance, and Government acceptance of all installed ECMs. The Performance Bond shall be released upon Government acceptance of all Contractor-installed ECMs. The Payment Bond shall be released upon receipt of satisfactory evidence that all sub-contractors, laborers, and other sub-contractors have been paid in full.

4. The Contractor shall not file any mechanics liens against the Government for the ECM projects and this requirement shall flow down to all sub-contractors. Therefore, the Payment Bond shall secure the Contractor's obligations for payment of laborers, suppliers, and all sub-contractors.

### **H.18 PROTECTION OF FINANCIER'S INTEREST**

The Government recognizes that project financing associated with Contractor performance of Delivery Orders issued against this Contract may be accomplished using third-party financing, and as such, will permit the financing source to perfect a security interest in the Installed ECM, subject to and subordinate to the rights of the Government. To provide protection of any financier's interest, the Contractor may be required to assign to its lenders, some or all of its rights under a Delivery Order. The Government will consider:

- a. Requests for assignments of monies due or to become due under a Delivery Order provided the assignment complies with the Assignment of Claims Act.
- b. Requests for the Government to provide financiers copies of any cure or show-cause notice issued to the Contractor.
- c. Requests by financier or secured interest holders for extension of response time



to cure or show-cause notices.

- d. Requests for change of Contractor (assignment, novation, etc.) of a Delivery Order on substantially the same terms and conditions will be considered by the Government and approved if acceptable to the Government.

#### **H.19 ADDITIONAL OR DIFFERENCE CLAUSES AND PROVISIONS FOR DELIVERY ORDERS AND DELIVERY ORDER REQUEST FOR PROPOSAL**

Solicitations for a specific Delivery Order (DO RFP) may contain additional clauses and provisions that are site specific to the agency's requirements. Should there be a conflict between the terms and condition provisions in the Delivery Order and the IDIQ Contract, the Contractor shall notify the Agency Contracting Officer for resolution.

#### **H.20 PROCEDURES FOR AWARDING DELIVERY ORDERS**

- (a) Selection of the Contractor for issuance of a specific Delivery Order will be made pursuant to the provisions in either paragraph (1) or (2) below:

1. **Single Source Awards**

The Agency Contracting Officer may issue a Delivery Order to any one of the Contractors with a Contract award for this DOE Region if an Agency Contracting Officer has determined:

A.) The agency's need for the services ordered is of such unusual urgency that providing such opportunity to all Contractors would result in unacceptable delays in fulfilling that need;

B.) Only one such Contractor is capable of providing the services or property required at the level of quality required because the services or property ordered are unique or highly specialized;

C.) It is a Contractor-Identified project for which rationale can be identified and documented that consideration of other IDIQ Contractors offers for the project site is not in the best interest of the Government;

D.) It is necessary to place an order with a particular Contractor in order to satisfy a minimum guarantee of this Contract;

E.) The Delivery Order should be issued on a sole source basis in the interest of economy and efficiency because it is a logical follow-on to a Delivery Order previously issued to a Contractor on a competitive basis.

2. **Awards Based on Competition Among Eligible IDIQ Contractors:**

The Agency Contracting Officer may make selections of Delivery Order awards through competition amongst the IDIQ Contractors for a Government-Identified project. Competition may be limited as determined by the Agency Contracting Officer.

- (b) The Agency Contracting Officer for a specific Delivery Order project shall have the final decision authority as to the extent to which offers will be solicited for individual Delivery Orders, taking into account technical, economic and performance risk consideration; past performance on previous Delivery Orders issued against this Contract and the factors described in (a) above. Such decisions shall not be subject to protest unless the issuance of a Delivery Order increases the scope, term or maximum value of the Contract. The DOE Task and Delivery Order Ombudsman shall be responsible for reviewing complaints brought by the Contractor regarding scope increases, term or maximum value of the Contract arising from the Agency Contracting Officer decisions, and for ensuring that all of the Contractors are afforded a fair opportunity to be considered.
- (c) The Contractor agrees that issuance of a Delivery Order in accordance with any of the procedures in this provision is deemed to have provided the Contractor with a “fair opportunity to be considered.”
- (d) Delivery Orders issued against this Contract will be fixed price Delivery Orders.
- (e) Projects will either be a Contractor-Identified Delivery Order Project or a Government-Identified Delivery Order Project. A Contractor-Identified Delivery Order Project is one initiated and developed by the Contractor and accepted by the agency. A Government-Identified Delivery Order Project is one initiated by a Federal agency’s release of a DO RFP.
- (f) Unless modified in the DO RFP for a Contractor-Identified project, the Delivery Order process for both types of projects are usually in three steps; requiring the Contractor to submit an Initial Proposal followed by submission of a Detailed Energy Survey, and a Final Proposal. Ordering agencies will identify instructions and procedures in the submission of a DO RFP.
- (g) The Contractor must first obtain the concurrence of the DOE COR prior to submitting a Contractor-Identified Proposal. The request for concurrence should be in writing and provide sufficient information such that the DOE COR is able to discuss the request with the agency where the project is proposed to be performed. The DOE COR will provide concurrence, or non-concurrence, in writing and within fifteen (15) days of the request. If concurred, an Initial Proposal within the scope of this Contract may be submitted as set out in **Section H.21** below.

## **H.21 REQUIREMENTS FOR INITIAL PROPOSAL CONTENTS FOR DELIVERY ORDER ECM PROJECTS**

### **(a) Initial Proposal**

The Contractor shall submit an Initial Proposal (IP) to the Government which sets out the merits, technical feasibility and economics, and price of the project. The Agency Contracting Officer will respond to the Contractor in writing, indicating whether or not the project will be pursued and by what means. If pursued, the Agency Contracting Officer will issue a Notice of Intent To Award (NOI), followed by a DO RFP which identifies the agency’s requirements. The Government will not be liable for allocable and allowable costs associated with audits and preparation of the IP unless the project addressed by the IP later becomes a Delivery Order award, or as negotiated by the Agency Contracting Officer.

## **(b) Contents**

The Contractor shall include in its IP a technical and price proposal in both electronic (Word and Excel) and hardcopy formats. The technical and price proposal shall be in accordance with the following requirements:

### **Technical Proposal:**

1. **Identification of ECM Project:** Identify the location of the ECM project, the Federal Agency and site, the facility manager's name and telephone number, the building and site address, and provide a narrative summary of the proposed ECM project to include:
  - (a) proposed system or component upgrade, deficiency correction, repair or replacement; and
  - (b) proposed system operational changes
2. **Savings Proposed:** Complete a **Schedule DO-4** for the ECM project. Include documentation which support the **Schedule DO-4** consisting of:
  - (a) assumptions on current facility or energy system operating conditions
  - (b) assumptions on proposed facility or energy system operating conditions
  - (c) energy savings calculations using formulae and procedures based on accepted engineering principles, including synergistic effects of other ECMs, and
  - (d) references used for data, assumptions or empirical formulas
3. **M&V Overview:** Provide a general description of the Measurement and Verification Plan proposed for this project, referenced to the latest version of the FEMP M&V Guidelines or the International Performance Measurement and Verification Protocol.
4. **Management Approach:** Provide the following:
  - (a) **Organization:** Show the Contractor's organization (by name as available) for implementing and managing the project, to include the responsibilities of each individual element shown and the lines of authority within the overall organization. Also identify what portions of the effort if any, are to be sub-contracted, and if so, provide the same information for sub-Contractor organization and personnel.
  - (b) **Risk/Responsibility Matrix:** The Contractor shall complete and submit with its IP a Risk/Responsibility Matrix detailing its proposed approach or method to address each area in the Risk/Responsibility Matrix. The format and content of this Risk/Responsibility Matrix set out in **Attachment 5**.

### **Price Proposal:**

The Contractor shall submit completed **Schedules DO-1(Initial), DO-2, DO-3 and DO-4**, and the documentation to support the entries on the form. Direct and indirect expenses must be consistent with the Contractor's approved accounting system. Direct and indirect expenses shall

be submitted in the DO schedules in a manner consistent with **Attachment 8**.

Price proposals shall be evaluated to assess:

- 1) The completeness and traceability of the proposed price (i.e. sum of annual Contractor payments) to the offeror's technical approach to and understanding of the ECM project proposed.
- 2) The reasonableness as well as realism of the proposed price (payments), relative to the technical project proposed, and the estimated savings indicated as achievable, based on an evaluation of the DO Schedules submitted by the Contractor, as well as supporting documentation for the price proposed.
- 3) The guaranteed annual energy cost savings exceed the annual Contractor payment for each year of the performance period.
- 4) The mark-up(s) and added premiums proposed for the project are in accordance with the negotiated maximums for the Contractor, as identified in **Schedules B-1 and B-2** of this Contract.

## **H.22 REVIEW OF INITIAL PROPOSALS FOR DELIVERY ORDER ECM PROJECTS**

- (a) **Contractor-Identified Project:** The Government will review the Initial Proposal submitted by the Contractor and make a determination as to whether the Contractor-Identified project is a project that the Government wants to pursue further. If the Government determines to pursue the Contractor-Identified Project, a NOI and a DO RFP will be issued to the Contractor. The NOI will request a Detailed Energy Survey and a Final Proposal in accordance with the requirements of the DO RFP and the proposal contents included in **Sections. H.23 and H.24** of the Contract.
- (b) **Government-Identified Project:** Should the Government determine to pursue a Government-Identified Project, a DO RFP with a technical data package and/or site description will be issued by the Government. The Government-Identified Projects will be competed among eligible Contractors and evaluated in accordance with the evaluation factors identified in the specific DO RFP. The selected Contractor for award will be notified by the Agency Contracting Officer with the issuance a NOI and request for a Final Proposal with specific instructions.

## **H.23 DETAILED ENERGY SURVEY**

The selected Contractor for both Contractor and Government-Identified Projects shall conduct a Detailed Energy Survey (DES) of facilities and energy systems at the project site to confirm the Contractor's ability to achieve the estimated annual cost savings as provided in **(Schedule DO-1 (Initial), column (a))**.

The DES shall identify the relevant existing conditions of applicable Government facilities, including but not limited to:

- Building physical condition i.e assumptions on current and proposed facility or energy system operating conditions
- Hours of use or occupancy

- Area of conditioned space
- Inventory of energy-consuming equipment or systems
- Energy-consuming equipment operating conditions and loads
- Baseline weather ( i.e. Cooling and Heating Degree Days)
- Proposed construction and M&V schedule
- Energy savings calculations using formulae and procedures based on accepted engineering principles, including synergistic effects of other ECMs
- Cite references used for data, assumptions or empirical formulae

For each ECM proposed, the Contractor shall provide a detailed energy analysis documenting the proposed annual energy savings performance of the ECM after installation, startup and testing.

The Contractor shall document the results of the DES and provide the documentation to the Agency Contracting Officer. The documentation shall identify any existing conditions that vary from the Government's provided data and must include a proposed energy baseline and a site specific M&V Plan. The Government will review and provide comment on the DES results.

## **H.24 REQUIREMENTS FOR FINAL PROPOSAL CONTENTS FOR DELIVERY ORDER ECM PROJECTS**

The Contractor shall submit a Technical and Price proposal in its Final Proposal in electronic (Word and Excel) format as required in the DOR RFP. The format requirements are:

### **1. Volume I - Technical Proposal shall include:**

- (a) ECM description - For each ECM proposed, the Contractor shall submit narrative information for items as applicable, in the format specified below:
  1. ECM No. \_\_\_\_\_
  2. Location affected
  3. ECM Interface with Government equipment
  4. Proposed equipment identification including manufacture, model number and optional equipment proposed for each ECM component
  5. Physical changes – list major physical changes to equipment or facilities required to install proposed ECM such as relocation or removal of equipment. Include manufacturer's literature and specifications for each ECM component proposed
  6. Utility interruptions – Specify extent of any utility interruptions needed for installation of proposed ECM.
  7. Agency support required – Specify any government agency support required during implementation of the ECM.
  8. Briefly describe any potential environment impact resulting from installed ECM.
  9. Utility rebate or system benefit fund financial incentive – If applicable specify ECM financial incentive(s) available, source, estimated payment amount, how and when payment will be applied and impact on project cash flow ( e.g. pre-performance-period payment before acceptance, reducing implementation price (DO2) and financing among), and proposed percentage of estimated financial incentive payment Contractor guarantees as submitted in DO schedules.
  10. ECM project schedule – provide a project schedule to include the duration of the following key phases:
    - (a) Engineering/design/acceptance

- (b) Equipment procurement/lead time, (i.e. date required to acquire equipment and delivery on-site)
- (c) Installation and commissioning

(b) ECM Performance Measurement:

- (1) The Contractor shall prepare a severable portion that describes a complete Measurement and Verification (M&V) Plan. The M&V Plan shall use the template and outline provided in **Attachment 7**. The M&V Plan shall include an electronic version of the methods for calculating the ECM energy savings for the Government's review and approval.
- (2) ECM Commissioning Approach – The Contractor shall prepare a severable portion that describes the ECM Commissioning Approach for each of the proposed ECMs.

(c) Management Approach:

- (1) **Organization.** Show the organization for implementing and managing the site-specific project through the use of an organizational chart. The proposed organization shall contain the responsibilities of each element shown on the organization chart. Identify primary personnel by name in each element. Show the lines of authority within the organization. If portions of the project are to be sub-contract (e.g., design of an energy conservation system), identify the sub-contracted function, and which element of the Contractor's organization will manage the sub-contract(s).
- (2) **Risk/Responsibility Matrix.** The Contractor shall complete and submit a final Risk/Responsibility Matrix detailing its proposed approach or method to address each area in the matrix. Final Proposal submission of this Risk/Responsibility Matrix should reflect revisions based on results of agency discussions and agreements with the Contractor on Risk/Responsibility Matrix it submitted in the IP. The format and content for the Risk/Responsibility Matrix is provided at **Attachment 5**.
- (3) **Operations, Maintenance, Repair, and Replacement.** Show the organizational structure and describe the approach for performance of the proposed ECM operations, maintenance and repair and replacement requirements. Each ECM will identify the organization(s) (Agency or Contractor/sub-contractor) responsible for operations and maintenance of Contractor-installed equipment. Detail how responsibilities are shared or reference where this information is located. Identify reporting requirements of Agency or Contractor during the performance period. Responsibilities and risks of operations shall be briefly defined in the Risk/Responsibility Matrix.
- (4) **ECM Training.** Describe in detail how training for each ECM will be provided for Government personnel. Approach should be customized depending on the level of operations and maintenance responsibility to be assumed by Government personnel.

2. Volume II -Price Proposal shall include:

Based on the results of the DES, the Contractor shall submit a completed **Schedule DO-1 (Final), DO-2,**

**DO-3, DO-4 and DO-5**, with supporting documentation as identified by the Agency Contracting Officer. The supporting documentation shall be organized by the proposed Contractor work as follows:

- (a) Section 1. Summarize project-level expenses from project development through Delivery Order award (no ECM breakout required).
- (b) Section 2. Summarize Pricing and expenses of implementation and construction phases allocated by ECM.
- (c) Section 3. Summarize performance-period expenses aligned with proposed DO-3 line item expenses.
- (d) In addition to the submission of DO schedules and supporting documents, the Contractor shall provide a summary of the finance offer being proposed. At a minimum, the finance summary shall include the Investor Deal Summary (IDS), selected financier's Standard Finance Offer (SFO) and Selection Memorandum.

## **H.25 FINAL PROPOSAL EVALUATION AND AWARD FACTORS**

Final proposals will be evaluated and selected in accordance with the criteria set forth the in the DO RFP. The Government shall not be responsible for any costs incurred, such as proposal preparation costs or the costs incurred in conducting the DES unless authorized by the Agency Contracting Officer.

## **H.26 PREAWARD REQUIREMENTS**

- 1. Pre-Award Requirements – Project Financing by Contractor for ECM project:
  - (a) If the selected Contractor is to provide its own financing for project execution, the Contractor shall provide evidence of surety's commitment for bonding upon Government's acceptance of the DES.
  - (b) Should the Contractor fail within the specified timeframe to provide acceptable evidence of bonding capability the Government may determine that the Final Proposal is not acceptable.
- 2. The Government recognizes the unique aspects of third party financing for ECM projects. The Government is willing to discuss and consider third party financier needs for any notification(s) during the Delivery Order term.

## **H.27 REQUIREMENTS FOR COMPETITIVE FINANCING ACQUISITION**

### **H.27.1 Investor Deal Summary**

The Contractor shall submit the IDS (**Attachment 9**), along with the Contractor's Point of Contact, electronically in Microsoft Word format, to the Agency Contracting Officer, DOE CO and COR after completion of the DES.

## **H27.2 Competitive Financing Offers Based on Investor Deal Summary And Standard Financing Offers**

- (a) The Contractor shall solicit and select financing offers from the commercial market place through a competitive selection process. This process must incorporate the final IDS and require the financing offers to be in the form of the Standard Financing Offer (SFO) as set out in **Attachment 10** to this Contract. Once this process is completed and a selection is made, the Contractor shall prepare a Selection Memorandum describing the selection process including the number of offers solicited and received, the rationale for selecting the financier, and the reasons why the selection is the best value for the project. This process may be subjected to audit by the government.
- (b) The Contractor shall certify to the Government that the contents of the Selection Memorandum are true and correct and in accord with best business practice.
- (c) The Contractor shall submit the IDS, SFO, Selection Memorandum and certification with its Price Proposal in the Final Proposal (**H.24.2 (d)**).





## **PART II – CONTRACT CLAUSES**

### **SECTION I – CONTRACT CLAUSES**

#### **FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (JUN 1988)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The provisions incorporated by reference are both Federal Acquisition Regulation (FAR) clauses and Department of Energy Acquisition Regulation (DEAR) clauses. All of these provisions are available on the Internet, in full text, at: <http://farsite.hill.af.mil/vffar1.htm>, and <http://farsite.hill.af.mil/vfdoe1.htm> respectively.

<u>Clause No.</u>	<u>Clause Name</u>
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52.202-1	DEFINITIONS (OCT 1995), ALTERNATE I (APR 1984)
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This FAR clause, 52-202-1, is hereby modified by substituting the following for paragraph (a) of the clause:

- (a) "Head of Agency" means the Secretary, Deputy Secretary or Under Secretary of the Department of Energy and the Chairman, Federal Energy Regulatory Commission.

This same clause is further modified by substituting the following for paragraph (c) of this clause:

- (c) The term "DOE" means the Department of Energy and "FERC" means the Federal Energy Regulatory Commission.

52.203-3	GRATUITIES (APR 1984)
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52.203-5	COVENANT AGAINST CONTINGENT FEES (APR 1984)
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52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)
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52.203-7	ANTI-KICKBACK PROCEDURES (JUL 1995)
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52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
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52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)
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52.204-5	WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS ) (MAY 1999)
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52.204-6	DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (JUN 1999)
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52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)
52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2000)
52.219-9	SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2000)
52.219-16	LIQUIDATED DAMAGES-SUBCONTRACTING PLAN (JAN 1999)
52.222-1	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)
52.222-3	CONVICT LABOR (AUG 1996)
52.222-4	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (SEP 2000)
52.222-26	EQUAL OPPORTUNITY (FEB 1999)
52.222-35	AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)
52.222-36	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)
52.222-37	EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1999)
52.223-6	DRUG-FREE WORKPLACE (JAN 1997)
52.223-14	TOXIC CHEMICAL RELEASE REPORTING (OCT 2000)
52.227-1	AUTHORIZATION AND CONSENT (JUL 1995)
52.227-2	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)
52.228-5	INSURANCE — WORK ON A GOVERNMENT INSTALLATION (JAN 1997)
52.229-3	FEDERAL, STATE AND LOCAL TAXES (JAN 1991)
52.229-5	TAXES - CONTRACTS PERFORMED IN THE U.S. POSSESSIONS OR PUERTO RICO (APR 1984)
52.232-17	INTEREST (JUN 1996)
52.232-23	ASSIGNMENT OF CLAIMS (JAN 1986)
52.233-1	DISPUTES (DEC 1998), ALTERNATE I (DEC 1991)
52.233-3	PROTEST AFTER AWARD (AUG 1996)

52.236-13	ACCIDENT PREVENTION (NOV 1991)
52.242-13	BANKRUPTCY (JUL 1995)
52.244-5	COMPETITION IN SUBCONTRACTING (DEC 1996)
52.249-2	TERMINATION FOR CONVENIENCE OF GOVERNMENT (FIXED PRICE) (SEP 1996)
952.227-13	PATENT RIGHTS — ACQUISITION BY THE GOVERNMENT (SEP 1997)
952.208-70	PRINTING (APR 1984)
952.209-72	ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997)
970.5204-2	INTEGRATION OF ENVIRONMENT, SAFETY AND HEALTH INTO WORK PLANNING AND EXECUTION (JUN 1997)
970.5204-59	WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (APR 1999)

THE FOLLOWING CLAUSES ARE APPLICABLE TO  
THE CONSTRUCTION PHASE(S) OF THE CONTRACT AND DELIVERY ORDERS

52.222-6	DAVIS-BACON ACT (FEB 1995)
52.222-7	WITHHOLDING OF FUNDS (FEB 1988)
52.222-8	PAYROLLS AND BASIC RECORDS (FEB 1988)
52.222-9	APPRENTICES AND TRAINEES (FEB 1988)
52.222-10	COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)
52.222-11	SUBCONTRACTS (LABOR STANDARDS) (FEB 1988)
52.222-12	CONTRACT TERMINATION — DEBARMENT (FEB 1988)
52.222-13	COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)
52.222-14	DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)
52.222-15	CERTIFICATION OF ELIGIBILITY (FEB 1988)
52.222-27	AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)
52.227-4	PATENT INDEMNITY — CONSTRUCTION CONTRACTS (APR 1984)

52.228-2	ADDITIONAL BOND SECURITY (OCT 1997)
52.236-2	DIFFERING SITE CONDITIONS (APR 1984)
52.236-3	SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)
52.236-5	MATERIAL AND WORKMANSHIP (APR 1984)
52.236-6	SUPERINTENDENCE BY THE CONTRACTOR (APR 1984)
52.236-7	PERMITS AND RESPONSIBILITIES (NOV 1991)
52.236-8	OTHER CONTRACTS (APR 1984)
52.236-9	PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES AND IMPROVEMENTS (APR 1984)
52.236-10	OPERATIONS AND STORAGE AREAS (APR 1984)
52.236-11	USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)
52.236-12	CLEANING UP (APR 1984)
52.236-14	AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)
52.236-15	SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)
52.236-21	SPECIFICATION AND DRAWINGS FOR CONSTRUCTION (FEB 1997)
52.243-4	CHANGES (AUG 1987)
52.246-13	INSPECTION - DISMANTLING, DEMOLITION, OR REMOVAL OF IMPROVEMENTS (AUG 1996)
52.246-19	WARRANTY OF SYSTEMS AND EQUIPMENT UNDER PERFORMANCE SPECIFICATIONS OR DESIGN CRITERIA (DEC 1989) — ALTERNATE III (DEC 1989)
52.246-21	WARRANTY OF CONSTRUCTION (MAR 1994)
52.249-10	DEFAULT (FIXED PRICE CONSTRUCTION) (APR 1984)

THE FOLLOWING CLAUSES ARE APPLICABLE TO  
THE SERVICES PHASE(S) OF THE CONTRACT AND DELIVERY ORDERS

52.222-41	SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989)
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52.222-42	STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)
52.222-43	FAIR LABOR STANDARD ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENTS (MULTIPLE YEAR AND OPTION CONTRACT) (MAY 1989)
52.227-3	PATENT INDEMNITY (APR 1984)
52.232-1	PAYMENTS (APR 1984)
52.232-8	DISCOUNTS FOR PROMPT PAYMENT (MAY 1997)
52.232-25	PROMPT PAYMENT (JUN 1997)
52.243-1	CHANGES — FIXED PRICE (AUG 1987) ALTERNATE I (APR 1984)
52.246-25	LIMITATION OF LIABILITY — SERVICES (FEB 1997)
52.249-8	DEFAULT (FIXED PRICE SUPPLY AND SERVICES) (APR 1984)

THE FOLLOWING CLAUSES ARE APPLICABLE TO THE CONSTRUCTION PHASE(S) OF THE CONTRACT AND DELIVERY ORDERS.

52.225-9	BUY AMERICAN ACT — CONSTRUCTION MATERIALS (MAY 2002)
52.225-11	BUY AMERICAN ACT — CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS

## **PART III — LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**

### **SECTION J — LIST OF ATTACHMENTS**

<u>Attachment</u>	<u>Title</u>
1	DEFINITIONS OF TERMS APPLICABLE TO THIS CONTRACT
2	SCHEDULES OF SUBMITTALS FOR DELIVERY ORDERS Sample Schedule of Required Pre-Award Deliverables Sample Checklist/Schedule of Post-Award Reporting Requirements and Submittals
3	CONTRACT B SCHEDULES Schedule B-1 Revised — IDIQ Contract Maximum Markups
4	DELIVERY ORDER(DO) SCHEDULES: DO-2 – Revised — Implementation Price by ECM DO-4 – Revised — First Year Energy and Cost Savings by ECM, Technology Category, and Delivery Order Annual Cancellation Ceiling Schedule
5	ESPC CONTRACT RISK/RESPONSIBILITY MATRIX
6	SUBCONTRACTING PLAN
7	M&V PLAN & REPORTING OUTLINES M&V Plan Outline M&V Post-Installation Report Annual Report Outline
8	DESCRIPTION OF DELIVERY ORDER (DO) SCHEDULES AND PLACEMENT OF PRICING INFORMATION
9	INVESTOR DEAL SUMMARY TEMPLATE
10	STANDARD FINANCE OFFER TEMPLATE